Supreme Court, U.S.
FILED
FEB 4 1980
MICHAEL RODAK, JR., CLERK

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1979

No. 79-784

WILLIAM B. GROVER
Petitioner,

vs.

COUNTY OF NAPA,
Respondent,

On Petition for Writ of Certiorari
To the United States Circuit Court of Appeals
For the Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

County of Napa, Respondent herein, prays that this Court not grant the Writ of Certiorari sought by Petitioner, William B. Grover.

OPINIONS BELOW

The opinion of the Court of Appeals for the Ninth Circuit (Petitioner's Appendix A) is reported at 597 F. 2d 181.

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition.

QUESTIONS PRESENTED

May an informal claim presented to a Trustee in Bankruptcy be amended to formal status after the conclusion of the claims filing period.

STATEMENT

The facts of the case are adequately set forth in the decision of the Circuit Court of Appeals (Petitioner's Appendix A) at pages A-2 and A-3.

ARGUMENT

There is no conflict among the Circuits involving the issues raised by the Petition. The Ninth Circuit applied the long standing rule permitting liberal amendment of informal claims. That rule permits a claimant to amend an informal claim to bring it into compliance with the Bankruptcy Rules. The amendment may occur after the time for the filing of claims has expired.

The opinions of the Circuit Courts are in accord that an informal claim may be amended after the conclusion of the claims filing period. Illustrative cases upholding the amendment procedure include the following:

In re Faulkner, 161 F 900 (8th Cir.); *Fausett v. Murner*, 402 F.2d 961 (9th Cir.); *Fyne v. Atlas Supply Co.*, 245 F.2d 107 (4th Cir.); *In re Lipman*, 65 F.2d 366 (2d Cir.); and *Sun Basin Lumber Co. v. United States*, 432 F.2d 48 (9th Cir.).

Petitioner attempts unsuccessfully to manufacture a conflict among the Fourth, Eighth, and Ninth Circuits by citing *Fyne v. Atlas Supply Co., supra,* and *In re Uhlenhopp,* 508 F.2d 412 (8th Cir.) in possible opposition to the Ninth Circuit's present position.

The Fourth and Eighth Circuit cases cited by Petitioner are in accord with the Ninth Circuit opinion in this case. *Fyne v. Atlas Supply Co., supra,* the Fourth Circuit case, upholds amendment of an informal claim after close of the claims filing period. As is true in this case, documentation of the underlying debt, which was the basis of the claim, existed in correspondence between the trustee and the claimant. The Court determined the documentation to be an informal claim, susceptible of amendment after the time for filing claims had expired.

In re Uhlenhopp, supra, the Eighth Circuit case cited by Petitioner, again upholds amendment where an informal claim evidencing the underlying debt was on file.

CONCLUSION

Petitioner has failed to show a conflict among the Circuits relating to Bankruptcy claims filing. In fact, Petitioner cannot point to any Circuit Court opinion in which amendment of an informal claim has been denied, where that claim was evidenced by a written memorandum filed within the claims filing period.

Petitioner is seeking to overturn a rule followed uniformly for many years. His Petition for Writ of Certiorari should be denied.

January 28, 1980

Respectfully submitted,

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